IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 1113 of 2006.

Judgment reserved on : May 15, 2007

Date of Decision: **September 10, 2007**.

Arya Pratinidhi Sabha through its Manager and another . ..Petitioners.

Versus

State of H.P. and another ……Respondents.

Coram

The Hon'ble Mr. Justice V.K. Gupta, Chief Justice.
The Hon'ble Mr. Justice V.K. Ahuja , Judge.

Whether approved for reporting?[1] Yes

For the Petitioners: Mr. Surinder Sharma, Advocate.

For the Respondents: Mr. M.S. Chandel, Advocate General with Mr. J.K. Verma, Dy. Advocate General for respondent No. 1.

Mr. Lovneesh Kanwar, Advocate for respondent No.2.

V.K. Gupta, C. J.

A very thoughtful, a very well intentioned, well meaning and purposeful observation, couched in a directional manifestation, by this Court has not been only twisted out of context by the respondents but distorted beyond recognition, totally and patently contrary to the spirit in

[1] Whether Reporters of Local Papers may be allowed to see the judgment?

which it was made, defeating and frustrating the very purpose for which it had been issued. Let us notice relevant facts first.

In a Writ Petition filed under Article 226 of the Constitution of India, being CWP No. 92 of 2006, by an Educational Society with respect to a dispute arising out of the matters relating to the grant of affiliation by the H.P. Board of School Education (hereinafter referred to as "the Board" for the sake of brevity) and condemning therein (in the Writ Petition) the deplorable state of affairs prevalent in the State of Himachal Pradesh with respect to the manner in which Schools are being run and granted affiliation by the Board, a learned Single Judge of this Court vide his judgment dated 25th May, 2006, after making certain pertinent observations, issued a few directions qua the State as well as the Board. One of such directions, being specific was as under:-

> "15) Keeping in view the tendency of the private schools to encourage copying the Board may issue directions that the private schools shall not be declared as Centres of examination for their own schools."

It must be clearly marked and very carefully noted as well as understood that all that this Court had said and meant in the aforesaid direction was that with a view to curb the tendency of private schools to encourage the adoption of unfair means in the examinations, such as copying etc., the Board may issue a direction that the private schools shall not be declared as Centres of examinations **for their own pupils/ students**. (Emphasis supplied by us). And quite purposely so because this Court rightly was of the opinion, based on its past experience as well as

its understanding of the situation that if students/ pupils of a school take a Board examination within the precincts of their own school, after their own school is declared by the Board as the Centre of examination for its own students, there is a likelihood, an apprehension of the Management as well as the Teachers and the staff members of that school helping the students in adopting unfair means in that examination. We are careful in using the expressions "likelihood" and "apprehension" and we must hasten to add that this "likelihood" or "apprehension" may or may not be there and that it would apply with equal force to private schools as well as the schools run by the Government/ the State. We are saying so because we are not oblivious of the ground reality that the Management of any Institution, be it a privately run Institution or a Government run Institution may have the aforesaid tendency to help its own students in adopting unfair means to achieve better results in the examination.

The aforesaid direction of this Court in CWP No. 92 of 2006 appears to have been considered by the Board in its 86th meeting held on 19th July, 2006. Item No. 20 of the agenda items in the aforesaid meeting related to the aforesaid direction of this Court and the following resolution was passed/ adopted in the aforesaid meeting in so far item No. 20 was concerned. We quote :-

> "Item No.20: The instructions passed by the Hon'ble High Court of Himachal Pradesh in Court Case No. 92/2006 regarding affiliation to the Privately managed institutions – information regarding.
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> The Board perused the instructions given by the Hon'ble High Court of Himachal Pradesh in C.W.P. No. 92/2006. On the instructions passed against No.15, the

> members observed that the examinees of all privately managed institutions be seated in the examination centres created in Government schools. In case of paucity of seating capacity in a nearby Government school, the Chairman Board of School Education may take appropriate decision."

There is absolutely no doubt that the aforesaid direction issued by this Court in CWP No. 92 of 2006 and the aforesaid decision taken by the Board in its meeting held on 19th July, 20006 were not only in conformity with each other but the Board's aforesaid decision in letter and spirit followed the aforesaid direction of this Court because the Board itself was of the opinion that the examinees of all privately managed Institutions be seated in the Examination Centres created in Government schools. It is to be carefully noted and marked that the aforesaid decision of the Board did not lay down or hold out that the privately managed Institutions shall cease to be declared and used as Examination Centres for conducting all the examinations of the Board, even with respect to the students of other Institutions.

What followed after the aforesaid two self-complementary and meaningful decisions, one taken by this Court and the other by the Board was a total negation of the both of them. The action following the aforesaid two decisions was not only in total derogation of the aforesaid two decisions but defeated and frustrated the very purpose as well as intent thereof. On 1st September, 2006 the Board issued a Notification bearing No. HB/17/Conduct-I/2006-07-21107 whereby it notified that the Examination Centres established in as many as 130 privately managed

educational Institutions were permanently closed with immediate effect. The text of the Notification runs like this:-

> "It is notified that the following examination centres established in the privately managed educational institutions are hereby permanently closed with immediate effect."

The Notification, below the aforesaid text, contained the names and particulars of as many as 130 Institutions whose examination centres were closed with immediate effect. In the later part of the said Notification the Board also decided to close the Examination Centres of other 9 Institutions but on the specific ground that these nine Institutions had indulged in mass copying and other irregularities in March, 2006 examinations. The text of the later part of the Notification reads thus:-

> "Apart from the above, the following examination centres are hereby closed for mass copying and other irregularities March, 2006 examinations:-"

Below this text was a mention of the names of these 9 Institutions. It may be noticed that with respect to 130 Institution there was no allegation of either mass copying or committing any irregularity. This position (of these 130 Institutions) was in clear contradistinction to the aforesaid 9 Institutions.

Vide communication No. HB/17/Conduct-I/2006-21108-21237 dated 2nd September, 2006 from the Secretary of the Board, addressed to the Principal of the petitioner Institution, an intimation was sent that the Board had cancelled the facility of Examination Centre granted to the

petitioner's Institution for "various reasons". The text of this communication reads thus:-

> "You are informed that the Board has cancelled the facility of examination centre granted to you for various reasons. You are, therefore, requested to mention the nearest Government school as centre of examination in the admission forms of the examinees for the forthcoming examinations."

As is evident, "various reasons" were neither mentioned, nor spelt out, in the communication nor disclosed to the petitioner.

On 4th September, 2006 the Department of Higher Education, Government of Himachal Pradesh sent a communication to the Secretary of the Board in which a mention was made about an announcement having been made by the Chief Minister of the State in the Legislative Assembly that the Board would be directed by the Government not to have examination centres in private schools and that accordingly, based upon the said announcement of the Chief Minister, the Government had taken a decision in terms of Section 11(1) of the H.P. Board of School Education Act, 1968 (1968 Act: for short) to advise the Board not to have Examination Centres in private schools and that Examination Centres in future would be set up only in Government Educational Institutions. The text of this letter reads :-

> " I am directed to refer to the subject cited above and to say that while answering supplementaries to an Assembly Question, Hon'ble Chief Minister announced that H.P. Board of School Education will be directed not to have examination centres in private schools.

> In view of above, the Government has taken decision in terms of sub-section (1) of Section 11 of the H.P. Board of School Education Act, 1968 (Act No. 14 of 1968) to advise the Chairman/ Secretary, H.P. Board of School Education, Dharamshala not to have examination centres in private schools and in future, the examination centres be set up only in Government Educational Institutions.
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> You are, requested to take further action in the matter as per decision taken above and compliance report be sent to this Department within a period of one month from the date of receipt of this communication."

The Board vide its communication No. HB/17/Conduct-I/2006-21403 dated 21st September, 2006 dutifully informed the Government that it had in fact cancelled all the Examination Centres of privately managed Institutions and that in future Examination Centres would be set up and created in Government schools only. All the aforesaid actions of the Government as well as the Board have been impugned in this petition filed by Arya Pratinidhi Sabha and the Arya Girls Senior Secondary School petitioner No.1 and 2 respectively on various grounds including the violation of Article 14 of the Constitution of India.

On 15th December, 2006 when this matter alongwith other connected Petitions came up for consideration before this Court, this Court after making some adverse observations against the respondents in the respondents' misconstruing the direction issued by this Court in CWP No. 92 of 2006 (supra) directed the respondents to undertake a fresh study of the whole issue and reconsider the entire question and come up to this Court with a fresh proposal by the next date.

Two affidavits were filed, one on behalf of respondent No.1 (on 1st January, 2007) and the second on behalf of respondent No.2 (on 2nd January, 2007) in which these two respondents by referring to the aforesaid direction issued by this Court on 15th December, 2006 stated that even though they did reconsider the matter, they found themselves of the opinion that the impugned actions should be adhered to, maintained and be held sustainable and that there was no warrant or circumstance for changing the decisions taken by the Board as well as the State Government which are impugned in this petition. Para (2) of the affidavit filed on behalf of respondent No.1 by the Joint Secretary (Education), Government of Himachal Pradesh is apposite and we quote:-

> "That as per the aforesaid directions of this Hon'ble Court the matter was examined in detail jointly by the State Government and Himachal Pradesh Board of School Education. A meeting in this regard was held on 27.12.2006 at Dharamshala, the minutes of which are annexed herewith as Annexure A-1. All the aspects of closing the examination centre in the Private schools were examined in detail and it was decided that in order to conduct free and fair examination there should not be any examination centre in the private schools."

It is in the aforesaid background that this Court has now to consider and decide about the correctness, legality and validity of the impugned actions of the respondents. This Court has to consider and decide whether wholesale, blanket closure as well as cancellation of Examination Centres of all private run Institutions in the State is constitutionally permissible or it being an arbitrary action of the respondent is not sanctioned by the mandate of Article 14 of the

Constitution of India. If this Court finds itself of the opinion that the impugned actions of the respondents are constitutionally impermissible this Court has to devise ways and means, even while quashing and striking down the impugned actions, of ensuring that unfair means are not adopted in the examinations and that the Board in cooperation with the State Government as well as the Institutions concerned takes effective steps of ensuring free and fair conduct of all examinations in all the Examination Centres.

First and foremost, we have to decide the question of maintainability of the Writ Petition by the petitioners. Can the petitioners, and for that matter the private educational institutions be deemed to be persons/ Institutions aggrieved in not being granted the facility of having examination Centres in their precincts? On the face of it, by way of first impression, as a matter of immediate reaction, it may be argued that non-grant of the status of examination Centre to a particular Institution cannot be considered as prejudicial to that Institution because such an action does not visit the Institution with any adverse consequence. This is more so in view of the fact that in normal circumstances students/ examinees belonging to the same Institution are not supposed to take examination of the Board in the precincts of the same Institution. On a deeper consideration, on a more substantive thoughtful process however we find that non-grant of the status of examination Centres to private Institutions has at least two adverse consequences as far as the Institutions are concerned. First and foremost the Institutions feel prejudiced in being denied the opportunity of holding examinations within their precincts, even for students belonging to the other

Institutions. Secondly, in the estimation of the public at large, and more particularly the members of the academic community these Institutions are unnecessarily maligned and condemned, being treated as unworthy of the confidence expected from Institutions of impartial neutrality. Not only this, a very important aspect is closely associated with selecting Institutions for being declared as Centres of examination and the actual conduct of the examinations in such Institutions.

Using an Institution as a Centre of Examination, in effect and substance means the use of the precincts, the premises, the building as well as the infrastructure therein for conduct of the examinations. After all, the examinees have to be seated somewhere for taking the examinations and that place has to provide some basic infrastructure facilities to the examinees such as chairs, desks, clean and conducive atmosphere, light and air, electricity including the use of fans, toilets and drinking water facilities etc. etc. Not only this, for thousands and thousands of examinees the Board has to find sufficient accommodation available in every nook and corner of the State, both in urban, semi urban and rural areas. The precincts of educational Institutions, both private as well as Government run, provide this.

The provision of the building, the infrastructure facilities etc. has by itself nothing to do with the conduct of the examinations because the conduct of the examinations such as provision including their selection, posting etc., of Superintendents, Deputy Superintendents, Assistant Superintendents, Invigilation staff, Inspectors, flying squads, checking teams etc. etc. are matters which should be and are the responsibility and the concern of the Board only . Like the Election Commission of India

entrusted with the responsibility of holding free and fair elections in every nook and corner of the Country, the Board has the responsibility and obligation of holding and conducting free and fair examinations and therefore it is for the Board to ensure that it provides the aforesaid facilities and take all such steps as are necessary for conducting free and fair examinations. Whether the Board uses the precincts or the premises of a private Institution or a Government Institution would not and does not make any difference for the Board because it is no body's contention before us that the buildings, in other words the precincts or the premises, by themselves inherently contain any dubious apparatus providing for or catering to, either the adoption of unfair means or copying or committing any other irregularity. A building is a building. All buildings are similar. It makes no difference whether the building belongs to the Government or to a private Institution unless it is somebody's contention that the buildings belonging to the private Institutions have some in-built, hidden mechanism which facilitate the adoption of unfair means.

After all, it is neither expected nor desirable that the students belonging to an Institution should be asked to take examinations of the Board in an Examination Centre within the precincts of the same Institution. More importantly, the entire invigilation staff deployed in an examination Centre not has only to have impeccable credentials but is not supposed to be belonging to that Institution whose students are taking the examination. This would be a patent contradiction in terms. If however, in any particular, rare of the rarest cases where for some compelling reasons a particular Institution has to be declared as a Centre of Examination for its own students such as for reasons of topography

or non-availability of any other building within an area of few kilometers etc. etc., it is the duty of the Board to ensure that all possible steps are taken for deployment of invigilation staff in that building, members whereof not only have impeccable credentials but also have nothing to do with the students of that particular Institution and that no part of the Management of the Institution or any of its staff members is allowed to go anywhere near the examination Centre.

We have in an earlier part of this judgment referred to the obligation and the responsibility of the Board for conduct of free and fair examinations. This obligation and responsibility not only have statutory sanction but are also of a binding nature. Let us have a look at these statutory provisions.

The Himachal Pradesh Prevention of Malpractices at University, Board or Other Specified Examinations Act, 1984 (1984 Act: for short) is an enactment providing for prevention of malpractices at examinations of any University or the Board or any other specified Authority in the State of Himachal Pradesh. In Section 2(a) Board has been defined as Board of School Education for the State of Himachal Pradesh established under the Himachal Pradesh Board of School Education Act, 1968. In Sections 3, 4 and 5 some specified duties have been assigned upon persons appointed as paper setters at any examination including the persons entrusted with the task of printing of question papers. Section 5 clearly lays down that any person who is entrusted with the custody of any question paper for any examination shall not supply any copy thereof or communicate the contents thereof to any person except in accordance with the instructions given to him in writing in this behalf. Sub-section (2)

of Section 5 prescribes the punishment for violation of sub-section (1) thereof.

Section 7 of 1984 Act deals with the prohibition of copying as well as impersonating at examinations.

In the light of the submissions made at the bar on behalf of the Board, Section 9 of 1984 Act is very pertinent as well as relevant and important for our purpose because it clearly lays down that whoever entrusted with the conduct, supervision, evaluation of answer sheets etc. etc. refuses to discharge any function assigned to him shall be liable for punishment with imprisonment which may extend to three months but shall not be less than one month as well as fine. This Section assumes a very vital significance in the light of arguments advanced on behalf of the Board that quite often persons assigned invigilation duties in the examination centres do not turn up to perform their duties. Section 9 is a complete answer as well as a remedy with respect to all such persons. It is the bounden duty of the Board to invoke Section 9 in any case where it feels that persons entrusted with the conduct or supervision of the examination are refusing to discharge their obligations.

Now, let us refer to another important provision of law. Section 10 of the H.P. Board of School Education Act, 1968 (1968 Act: for short) empowers the Board to, inter-alia, conduct examinations based on the Courses prescribed by it. It also empowers the Board to admit to its examinations, on conditions that may be prescribed by it, the candidates who pursue the prescribed courses of instructions. Clauses (1), (2) and (3) of Section 10 of 1968 Act are relevant for this purpose and we reproduce them hereunder for ready reference:-

" Section **10**. **Powers and functions of the Board.**-Subject to the provisions of this Act, the Board shall-

(1) prescribe courses of instructions for school education in Himachal Pradesh;

(2) conduct examinations based on such courses;

(3) admit to its examinations, on conditions that may be prescribed, candidates who pursue the prescribed courses of instructions –

(i) in recognized institutions; and

(ii) privately;

…….

……..."

It is thus the obligation of the Board to conduct the examinations. Sections 10 opens with the mandatory as well as binding expression, "the Board shall". It is therefore, the obligation as well as statutory duty of the Board to conduct examinations as well as to admit to its examinations the candidates. What therefore follows is that in all matters relating to the conduct of examinations the Board has to devise its procedure, has to lay down applicable and binding terms and conditions and create conducive and congenial atmosphere to ensure that all the examinations conducted by it are conducted in a free and fair manner because the duty to conduct examinations in effect and substance means a duty for proper conduct of examinations in a free and fair manner. The Board cannot escape its responsibility of conducting properly as well as fairly all the examinations in a free manner.

On 14th May, 2007 Shri P. Mitra, Principal Secretary (Education), Government of Himachal Pradesh had filed his affidavit in the Court. In this affidavit, a reference was made to certain observations of this Court

made on 4th May, 2007. Paras 1 and 2 of this affidavit are apposite and we quote:-

> "1. That the above mentioned Civil Writ Petition is pending adjudication before this Hon'ble Court. This matter was listed on 4th May, 2007, when this Hon'ble Court observed that a meeting between the Principal Secretary (Education), Chairman of the Board of School Education and Secretary of the Board of School Education should be convened within a week and all the aspects should be discussed in such meeting and appropriate decision in this regard be taken. The office of ld. Advocate General conveyed the observations of this Hon'ble Court vide letter dated 04.05.2007.
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> 2. That as per the observations of this Hon'ble Court a meeting was convened on 8th May, 2007 to discuss the question of making the private schools as centres of Examination by the Himachal Pradesh Board of School Education. The minutes of the meeting are annexed herewith as Annexure A-1. All the aspects of allotting examination centres were examined in detail and all the participants in the meeting unanimously felt that the decision not to have examination centres in private schools was a well considered one and that this should not be changed."

At the outset, we must record that the Order dated 4th May, 2007 does not record or reflect that any observation was made by this Court which means that on that date some oral observations might have been made in the course of proceedings of this case. Be that as it may, a look at the copy of the proceedings of the meeting held on 8th May, 2007,

which has been annexed alongwith the aforesaid affidavit of the Principal Secretary (Education) reveals that the Board even prior to the Government having issued any direction had already decided not to have examination centres in private schools on the grounds mentioned and specified in the said proceedings. Para 6 of the aforesaid proceedings is relevant for our purposes and we quote:-

> "6. The Chairman, HP Board of School Education also brought to notice of the meeting that even before the Government issued the instructions, the Board had already decided not to have examination centres in private schools on the following grounds:-
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> i) Private schools are found indulging in mass copying.
>
> ii) Commercial rivalry amongst private schools.
>
> iii) Unhealthy competition amonst the private schools.
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> iv) As per Board guidelines, only Superintendent/ Deputy Superintendent of the examination centres are deployed by the Board and rest of the staff is from the same institution. In case Superintendent/ Deputy Superintendent do not turn up, their work is performed of the staff from the institution. Moreover the coordinator generally is appointed from the same institution.
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> v) The details as to where the answer papers are to be sent for evaluation are known to the Superintendent/ Deputy Superintendent and also Assistant Superintendent who is an employee of the same institution. This is very confidential information and it will not be appropriate that employees of private

schools know this because of chances of leakage and parent/ others following up to evaluation centres.

vi) The answer papers of the evening session are kept overnight in institutions where examinations are held. There have been instances of tampering with the answer sheets bundles."

In addition to the aforesaid six points, in para 7 of the aforesaid proceedings the Board took a view that its Chairman has "some control" over the Teachers of the Government schools whereas there was no such element of control vis-à-vis the teachers and employees of private schools. For ready reference we reproduce hereinbelow para 7 which reads thus:-

> "7. The Chairman HP Board of School Education also mentioned that he has some control over teachers of Government schools whereas the Board has no control over the employees of private schools. Further many of the private school are located in residential areas where the flying squad deployed by the Board cannot reach."

Since the aforesaid points mentioned in paras 6 and 7 contained in the proceedings of the meeting held on 8th May, 2007 required deeper and substantive consideration by us because these raised an issue of far reaching public importance, very material and relevant for our purposes, vide an order passed by us on 15th May, 2007, after referring to the aforesaid affidavit of the Principal Secretary (Education) and the aforesaid copy of the proceedings of the meeting held on 8th May, 2007, particularly para 6 thereof, we directed the Board, either through its Chairman or its Secretary to file an affidavit in this Court indicating therein all facts and

details with respect to such private schools in the last three years which were found indulging in mass copying. For ready reference, text of the Court order dated 15th May, 2007 is reproduced hereunder which reads thus:-

> " The Principal Secretary (Education) has filed his affidavit today, which is taken on record. Alongwith this affidavit, a copy of the proceedings of the meeting held on 8.5.2007 has been enclosed. In para 6 of this document, there is a mention about the Chairman of respondent No.2-Board stating that private schools are found indulging in mass copying. We direct that either the Chairman of respondent No.2-Board personally or its Secretary shall file an affidavit in the Registry of this Court latest by 19th May, 2007 indicating therein all facts and details about such private schools in last three years which were found indulging in mass copying. In addition, we shall also be informed as to what action, if any, was taken against these institutions. Also whether these institutions were issued any notice or show cause about the aforesaid allegations against them. If the aforesaid affidavit is not filed before 19th May, 2007, this Court shall draw an inference that the aforesaid statement attributed to the Chairman was incorrect.
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> The Registry shall place the aforesaid affidavit, if filed, before us in our chambers for our perusal and consideration.
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> Heard. Judgment reserved."

Pursuant to our said Order, Shri M.L. Sharma, Secretary, Himachal Pradesh Board of School Education, Dharamshala, filed his affidavit on 18th May, 2007. In our Order dated 15th May, 2007, we had clearly, in categorical and unequivocal terms directed the Board to give

to us all facts and details with respect to such private schools, in last three years which were found indulging in mass copying and any action which was taken against them. Also, whether these Institutions were issued any notices of show cause about the allegation(s) against them relating to mass copying. We must very clearly and without any hesitation whatsoever state and place it on record that in the aforesaid affidavit of Shri M.L. Sharma no fact has been mentioned about any school, be it a private school or any other school found indulging in any incidence of mass copying. The affidavit is conspicuously silent about any episode, any incident or any fact situation where any school, repeat, any school was found indulging in copying, mass copying or any action having been initiated against any such Institution. The affidavit therefore was a futile and an unnecessary as well as a wasteful attempt on the part of the Board to completely sidetrack the issue raised by us in our Order dated 15th May, 2007. We are reproducing hereinbelow the complete text of this affidavit to show and demonstrate that the deponent thereof did not even deal with the issue in question, totally sidetracked the same and failed to provide any fact or any material particular. The text of the affidavit reads thus:-

> "AFFIDAVIT
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> I, M.L. Sharma s/o Sh. Ram Rattan Sharma aged 54 years presently working as Secretary, HP Board of School Education, Dharamshala (Kangra) do hereby solemnly affirm and declare as under:
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> That the abovementioned case CWP No. 1113 of 2006 came up for hearing before this Hon'ble High Court on 15th May, 2007 and this Hon'ble court was

pleased to order as conveyed by our standing counsel Sh. Lavneesh Kanwar as follows:

'The Chairman of the HP Board of School Education either personally or the Secretary, HP Board of School Education shall file an affidavit latest by 19th May, 2007, indicating therein all facts and details about such private schools in last 3 years indulging in mass copying. In addition, the Chairman or the Secretary shall further clarify that what action was taken against these institutions, whether any notices were issued or show cause was issued to these institutions. If an affidavit is not filed in the court by 19th May adverse inference will be drawn against the Board.'

2. That this Hon'ble court has delivered judgment on dated 25.5.2006 in C.W.P. No. 92/2006 in the matter of Divya Jyoti Educational Society v/s HP Board of School Education and another and as per direction No. 15 directed as under:

   'Keeping in view the tendency of the private schools to encourage copying the Board may issue directions that the private schools shall not be declared as Centres of examination for their own schools.'

3. That in compliance of the directions of this Hon'ble Court and keeping in view the opinion expressed by the general public, observations of the flying squads constituted by the replying Board to check the menace of copying in the examination centres for the last more than four years and complaints lodged by the students during the course of 'Seedhi Baat' at different places with the Chairman of the Board, it has been observed that privately managed schools are more prone to mass copying, the matter was placed before the Board of directors at its 86th Meeting held on 19.7.2006. After thorough discussion on the mass copying based on the opinion expressed by aforesaid quarters, the House took

a policy decision which is annexed as R-I and its English version (RT-I) is as follows:

'The Board perused the instructions given by the Hon'ble High Court of Himachal Pradesh in C.W.P. No. 92/2006. On the instructions passed against No.15, the members observed that the Examinees of all privately managed institutions be seated in the examination Centres created in Govt. Schools. In case of paucity of seating capacity in the nearby govt. Schools, the Chairman Board of School Education may take appropriate decision.' In view of being policy decision no show cause notice was issued to any privately managed institution.

4. That it is pertinent to mention here that the matter with regard to mass copying was also discussed in detail in the Himachal Pradesh Vidhan Sabha on 24.8.2006, in which Leader of the opposition demanded whether the Govt. will ensure that there will be no centres in privately managed institutions, on which the Hon'ble Chief Minister assured that the Govt. will issue instructions in that regard to the Board of School Education. Later on the matter was discussed at the Govt. level and necessary directions were issued on 4.9.2006 to the Board not to have Examination Centres in private schools and in future the examination centres be set up only in Govt. Educational institutions (annexed as R-II).

5. Hence, the decision not to have examination centres in private schools was implemented w.e.f. March, 2007 Examinations.

Dharamshala — sd/-
17th May, 2007 — Deponent

What therefore clearly is established beyond an iota of doubt is that the respondents have failed to name or mention any private Educational Institution in the State of Himachal Pradesh about which any allegation of mass copying or indulging in unfair means was made. On the other hand, the list of nine schools enclosed with the Notification dated 1st September, 2006 (supra) reveals that all these are Government Institutions about which specific allegations of mass copying and indulging in irregularities have been made. As far as 130 Institutions mentioned in this Notification which were private Institutions, no allegation of either mass copying or indulging in any irregularity has been mentioned in the aforesaid Notification against any one of them. The conclusion is irresistible. It is that there is no material before us nor was there any material before the State Government or the Board by which it could be suggested or inferred that private educational Institutions had indulged in either any mass copying or in any other unfair means. The conclusion drawn by the Board or the State Government therefore to the aforesaid effect was based upon no material. It was totally whimsical as well as arbitrary. Whether it was malafide or based on extraneous considerations is not for us to comment. At least we have no material before us to offer our comments on either of these two aspects.

In conclusion, we have no hesitation in recording and holding that the stand taken by the Government as well as the Board that private educational Institutions indulge in mass copying or that they commit irregularities in the examination centres or with respect to conduct of examinations is totally untenable and actually has turned out to be false and incorrect. At the risk of reiteration we do wish to state that no

material was placed before us despite opportunities granted to substantiate this stand in any manner. On the other hand, as noticed hereinabove the list of nine educational Institutions which were found indulging in mass copying showed that these all were Government schools.

Coming back to para (6) of the aforesaid suggestion of the Chairman of the Board as contained in the proceedings of the meeting held on 8th May, 2007, we wish to observe that other aspects mentioned therein are totally irrelevant as far as any linkage or nexus with the setting up of examination centres in private schools are concerned. Commercial rivalry amongst private schools or unhealthy competition amongst them cannot be any ground for denying to the private schools the setting up of examination centres in their precincts.

Coming to para (7) of the aforesaid proceedings, we totally disapprove the stand taken by the Chairman that he has "some control" over teachers of Government schools whereas according to him he has no such control over the teachers and employees of private schools. Board is the creation of 1968 Act. The Chairman of the Board is also the creation of this Act. Nothing was brought to our notice by the respondents which could suggest as to how and in what manner does the Board or its Chairman exercise its control over the Teachers of Government Schools. The Teachers of the Government Schools are the employees of the State Government. They are not the employees of the Board or its Chairman. Whatever control the Board or its Chairman has or may exercise is relatable as well as traceable to the powers of the Board either under 1968 Act or 1984 Act. Whether the Teachers are the employees of the Government or they are the employees of private educational Institutions,

with respect to holding of examinations, whatever powers the Board or the Chairman has, have already been enumerated and discussed by us in the earlier parts of this judgment with specific reference to the particular provisions of 1984 Act and 1968 Act.

Coming to the other three aspects enumerated in para 6 (supra) we have to observe and direct as under:-

1. **Deployment/ positioning of Superintendents, Deputy Superintendents of Examination Centres etc. etc.**

We have already indicated and we wish to hereby issue a binding direction qua the Board as well as the State Government to ensure that no member of any invigilation staff, be it Superintendent, Deputy Superintendent or anyone else can be and shall be deployed in any examination Centre who belongs to the Institution in which that Centre is located. In other words, henceforth in every examination centre only such personnel shall be deployed for the conduct of the examination who have nothing to do with that Institution and who are outsiders, belonging to other Institutions.

If anyone chosen by the Board does not report for duty, provisions of 1984 Act, especially Section 9 thereof have to be invoked and the guilty officials/ Officers have to be dealt with accordingly.

2. **Answer Papers**

Systems have to be introduced and devised, and ways and means to be found about sending of answer papers in such

> manner and by such persons that the secrecy of destination thereof is not compromised. After all ballots cast in every election in the Country are properly secured and transported to the desired destinations by the Returning Officers and the Presiding Officers/ Polling Officers of the Booths working under them. Similar and identical arrangements are in place with respect to the examinations conducted by the Universities, including H.P. University. It shall henceforth be the duty of the Board to prescribe and take such measures as are conducive to ensure that fool-proof arrangements are in place for securing the answer books and for their transportation to the desired points/ destinations. Whether the answer papers of the evening session are kept overnight in the precincts of the Institutions where the examinations are held or these are deposited in other offices, establishments, under lock and key, such as the Treasuries etc. again will be an issue which the Board has to decide in the best interest of a free and fair examination.

The action of the respondents therefore in denying to private educational Institutions the facilities of locating examination Centres in their precincts/ premises is hereby held to be arbitrary as well as unreasonable and discriminatory. This is violative of Article 14 of the Constitution of India.

Based on this reasoning, we have no hesitation in allowing this Petition and quashing and setting aside the impugned action as well as

the impugned decisions of the respondents whereby the private educational Institutions were denied the benefit of examination Centres being located in their precincts/ premises. By issuance of a Writ of Mandamus we hereby accordingly direct the respondents to frame a scheme or issue guidelines, based upon decision to be taken on objective criteria, specifically in the light of the observations made in this judgment as well as directions contained therein, to ensure that free and fair examinations are held by properly locating examination Centres and by appropriate and suitable deployment of Officers and officials to be made Incharge of the conduct of examination Centres, but by ignoring the stipulation/ decision that examination Centres shall not be set up in private educational Institutions. The Scheme/ the guidelines, as above mentioned shall be drawn up/ formulated through joint consultation between the Board and the State. This process shall be completed within four weeks from today. The responsibility to complete this process within the aforesaid period, for its execution and implementation thereafter shall rest with the Chairman of the Board and the Principal Secretary (Education), Government of Himachal Pradesh.

The Writ Petition is allowed. No orders as to costs.

Sd/-
(V.K. Gupta), C.J.

Sd/-
(V.K. Ahuja), J.

September 10 , 2007.
(rks)

IN THE HIGH COURT OF HIMACHAL PRADESH,
SHIMLA.

CWP No. 1113 of 2006.

Judgment reserved on : May 15, 2007

Date of Decision: September 10**, 2007**.

Arya Pratinidhi Sabha through its Manager and another . ..Petitioners.

Versus

State of H.P. and another ……Respondents.

Judgment for consideration, please.

Sd/-
(V.K. Gupta), C.J.

I agree/ ~~do not agree.~~

Sd/-
(V.K. Ahuja), J.

List for pronouncement of judgment on September 10, 2007.

Sd/-
(V.K. Gupta), C.J.

Bench Court Secretary